

SPENCER FANE

BRITT & BROWNE LLP

ATTORNEYS & COUNSELORS AT LAW

KATHLEEN M. WHITBY  
[kwhitby@spencerfane.com](mailto:kwhitby@spencerfane.com)  
314-333-3929 (direct dial)

EPA Region 5 Records Ctr.



285090

October 11, 2005

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Tom Turner  
Associate Regional Counsel  
U.S. Environmental Protection Agency,  
Region V  
Office of Regional Counsel (C-14J)  
77 West Jackson Boulevard  
Chicago, IL 60604

Re: General Notice Letter, Clayton Chemical Site, Sauget, Illinois; Initial Response from  
Dow Screw Products, Inc. and FOIA request

Dear Mr. Turner:

This responds to a general notice letter date-stamped September 27, 2005 (copy enclosed) from the U.S. Environmental Protection Agency, Region V (EPA or the Agency) addressed to Dow Screw Products, Inc. (Dow Screw), concerning the Clayton Chemical Site in Sauget, Illinois (the Site). Dow Screw received the notice letter on or about September 28, 2005. The notice letter requests that Dow Screw provide an initial response within ten (10) business days. Please consider this letter that initial response from Dow Screw.

EPA's notice letter informs Dow Screw that the company may be a potentially responsible party (PRP) for the Site based on a volumetric ranking document provided to EPA by a group of large-volume PRPs who previously conducted a liquids removal action at the Site. EPA states that it sent general notice letters in November of 2004 to the top 72 parties on this volumetric ranking, all of whom are assigned at least 75,000 gallons or more of material and who collectively represent 72% of the volume attributed by the ranking.

EPA now has expanded its notice letter recipients list by sending general notice letters to another 160 parties, including Dow Screw, who appear on the large-volume PRPs' ranking with assigned volumes of 10,000 to 74,999 gallons. The Agency requests that Dow Screw and other newly-noticed PRPs enter into negotiations concerning the Site and EPA's past costs, and voluntarily perform or finance the response activities EPA "has determined or will determine are required at the Site."

1 North Brentwood Boulevard, Suite 1000

St. Louis, Missouri 63105-3925

(314) 863-7733

[www.spencerfane.com](http://www.spencerfane.com)

Fax (314) 862-4656

SPENCER FANE  
BRITT & BROWNE LLP  
ATTORNEYS & COUNSELORS AT LAW

Tom Turner  
October 11, 2005  
Page - 2 -

Unfortunately, Dow Screw has no information about the past costs or response activities EPA desires the newly-noticed PRPs to discuss with the Agency. EPA's September 27 notice letter does not contain an actual past costs amount or summary of EPA's cost documentation, so Dow Screw has no information upon which to evaluate EPA's past cost demand. Likewise, although the first page of the notice letter lists soils removal response activities EPA plans to conduct at the Site, the next page of the letter describes the reasons why EPA asked some or all of the 72 large-volume PRPs to perform this soils removal work. Dow Screw has no information about what, if any, EPA-desired work is not already subject to performance by all or some of the 72 large-volume parties. Indeed, it is our understanding that a subset of the 72 large-volume PRPs have agreed to perform all of the soil removal response activities EPA has requested at the Site, and to reimburse EPA for 100% of EPA's costs concerning such work.

It is Dow Screw's policy to cooperate with government entities concerning environmental remediation projects for which it has or may have environmental responsibility, and to work with other companies on such projects. Dow Screw previously received a mailing from common counsel for an unknown subset of the 72 large-volume PRPs concerning EPA's soils removal work. That subset of unknown PRPs gave Dow Screw less than seven days (their invitation letter was dated July 22 and required a response by July 29), to evaluate a take-it-or-leave-it, tiered "buy-in" participation amount to pay for soils removal work at the Site, as well as a non-negotiable PRP Agreement which set unfair and unacceptable participation terms for the small-volume parties. A second letter from common counsel provided certain changes to the proposed PRP Agreement, but did nothing to remedy fundamental flaws in the large-volume PRPs' approach to smaller companies.

Finally, a third letter from the large-volume PRPs' common counsel, dated October 3, used EPA's general notice mailing to again impose an unreasonable joinder deadline on smaller-volume parties. According to this October 3 correspondence, "EPA is requesting that all interested parties sign on to the PRP and Settlement Agreements by Friday, October 7, 2005," and thereby accept the demands of the still-unidentified large-volume PRPs. We have no way to evaluate the accuracy of the allegation that EPA insisted on an October 7 PRP joinder date for small parties.

In any case, the demands of the large-volume PRPs remain unacceptable. Although the October 3 common counsel letter states that smaller-volume parties may "resolve their liability for the soils cleanup" by paying the amounts demanded by the large-volume PRPs, the actual terms of their PRP Agreement do not "resolve" smaller-volume parties' liability at all. Rather, their proffered PRP Agreement leaves small parties exposed to cost recovery claims and contribution claims for cost overruns, while at the same time requiring: assignment of the small parties' cost recovery and contribution claims to the large-volume PRPs; waiver of the small parties' contribution defenses against large-volume PRPs' cost overrun contribution claims; a covenant

SPENCER FANE  
BRITT & BROWNE LLP  
ATTORNEYS & COUNSELORS AT LAW

Tom Turner  
October 11, 2005  
Page - 3 -

not to sue the large-volume PRPs for investigation and cleanup activities regarding the Clayton Chemical site; and denial of any oversight or audit rights regarding such activities or cost overruns.

As a result of the deficiencies and unfairness built into the large-volume PRPs' participation process, Dow Screw had no choice but to decline joinder in that group's efforts. Dow Screw was and remains willing to engage in discussions with the large-volume PRPs to attempt to create a fair participation process for the soils removal work. Dow Screw also is willing to participate in EPA-initiated negotiations concerning appropriate response action or settlement mechanisms for the Site.

However, Dow Screw cannot adequately respond to EPA or to the large-volume PRPs without knowing how or why Dow Screw is alleged to be responsible for environmental contamination at the Site, and the alleged relative shares of all parties, including Dow Screw and the large-volume PRPs.

Accordingly, please consider this a request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and 40 C.F.R. Part 2.102 et seq., and provide the undersigned with copies of all documents or information which EPA contends may link Dow Screw to the Site, including without limitation any transactional records or documentation used in the volumetric ranking for Dow Screw which is the basis of EPA's general notice letter. In addition, please provide a copy of the large-volume PRPs' ranking list or database which indicates each party's alleged relative shares. Third, please provide any information concerning the treatment, storage or disposal fate of materials sent to the Site; for example, were materials incinerated, and if so, provide information concerning which materials were subject to this treatment. Finally, we also request information concerning EPA's claimed past costs for the Site – a summary document would be fine for now. We pre-authorize up to \$250 in copy costs to cover this request. If the FOIA response costs exceed this amount, please call.

In the absence of documents or other information from EPA or the other PRPs demonstrating Dow Screw's responsibility for environmental contamination at the Site, the company must respectfully deny that it has any such liability. This response to EPA's notice letter, and Dow Screw's participation in any discussions or negotiations concerning the Site, does not and will not negate that denial. Further, Dow Screw specifically reserves all rights and defenses it may have with regard to the Site, including the ability to supplement this response based on new or additional information, and retains all objections or defenses available to it at law or in equity.

SPENCER FANE

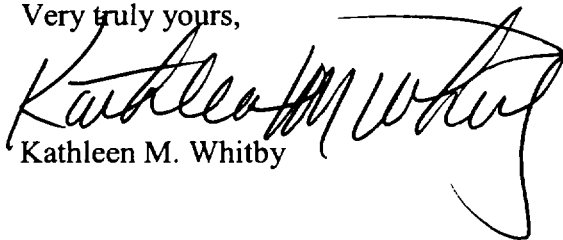
BRITT & BROWNE LLP

ATTORNEYS & COUNSELORS AT LAW

Tom Turner  
October 11, 2005  
Page - 4 -

Thank you in advance for your attention to the FOIA request contained in this response. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen M. Whitby', with a large, stylized flourish extending from the end of the signature.

Kathleen M. Whitby

Enclosure

cc: M. Ruwitch, Dow Screw Products, Inc.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGIONS 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

Rec'd by  
Dow Screw  
9/28/05

September 27, 2005

REPLY TO THE ATTENTION OF

**VIA FEDERAL EXPRESS**  
**RETURN RECEIPT REQUESTED**

**RRG Clayton Chemical Site (soil  
removal)**

Michael C. Ruwitch, President  
Dow Screw Products, Inc.  
3810 Paule Ave.  
St. Louis, MO 63125

**RE: Clayton Chemical Site General Notice of Potential Liability  
letter.**

**Dear Sir or Madam:**

The United States Environmental Protection Agency (U.S. EPA) has documented the release or threatened release of hazardous substances, pollutants and contaminants at the above referenced Site, and is planning to spend public funds to control and investigate these releases. This action will be taken by U.S. EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq., (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, Stat. 1613 (1986) (SARA), unless U.S. EPA determines that such action will be done properly by a responsible party. Responsible parties under CERCLA include the current and former owners and operators, and persons who generated the hazardous substances or were involved in transport, treatment, or disposal of them at the Site. Under Section 107(a) of CERCLA, where the Agency uses public funds to achieve the cleanup of the hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in cleaning up the Site, including investigation, planning and enforcement.

The U.S. EPA is currently planning to conduct the following actions at the above referenced Site:

1. Develop and implement a site health and safety plan;
2. Provide security for the site;
3. Sample, characterize, and consolidate for removal and disposal

**all contaminated soils found on-site and solids found in tanks (a.k.a. tank bottoms) and any other hazardous waste solid material found on-site;**

**4. Transport and dispose of all characterized hazardous substances, pollutants, wastes, or contaminants at a RCRA approved disposal facility in accordance with the U.S. EPA Off-Site Rule, 40 CFR 260.440;**

**5. Backfill the excavated site areas with clean material and topsoil. Restore and vegetate excavated areas to prevent soil erosion.**

U.S. EPA has received information that you may be a potentially responsible party (PRP) at this Site. The information used by U.S. EPA in part to make this determination was provided by the group of PRPs that conducted the initial liquid removal action at this site. The report used by U.S. EPA titled "The PRG-Clayton Liquids Removal Investigation Report" included a volumetric ranking of PRPs that may have sent liquids, solids and or other material to be processed at the Site. Based on U.S. EPA's review and analysis of the volumetric ranking in that report, the Agency has initially notified all PRPs that sent or contributed 75,000 gallons or more to the Site that they are PRPs. This group consists of 72 of the approximate 2,800 PRPs that sent material to this Site to be processed. However, U.S. EPA calculations indicate that the initial group of 72 PRPs contributed over 70% of the wastes processed at the Site.

The Agency's decision to initially notify the 72 largest PRPs at this Site is based on a number of factors. First, U.S. EPA wants to begin a removal action at this Site as soon as possible and having a limited number of PRPs in the group will make this possible. Second, EPA believes that having the small, initial group of 72 PRPs will make it easier for them to come to agreement and decisions on the many actions that need to be made during the course of the Site clean up. Finally, U.S. EPA plans to notice additional PRPs identified in the aforementioned report.

The initial group of 72 PRPs were issued a General Notice of Liability letter by the Agency in November of 1994. A list of the 72 PRPs that were previously notified by the Agency is attached for your information and review. Based on our discussions with the group of 72 PRPs and further analysis of the volumetric ranking EPA has decided to send additional General Notice of Liability letters to all PRPs that were identified as contributing 10,000 gallons to 74,999 gallons of waste to the Site.

**You are receiving this notice because the Agency further analyzed**

the volumetric ranking and found that you or your company contributed 10,000 to 74,999 gallons of waste to the Site.

By this letter, U.S. EPA notifies you of your potential liability with regard to this matter and encourages you, as a PRP, to reimburse U.S. EPA for costs incurred to date and to voluntarily perform or finance the response activities that U.S. EPA has determined or will determine are required at the Site.

As a potentially responsible party, you should notify U.S. EPA in writing within ten (10) days after receipt of this letter, regarding your willingness to perform or finance the activities described above. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you or your organization does not wish to negotiate a resolution of its potential responsibility in connection with the Site and that you or your organization has declined any involvement in performing the response activities.

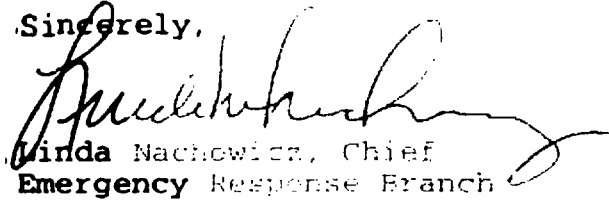
Your letter should indicate the appropriate name, address, and telephone number for further contact with you. If you are already involved in discussions with state or local authorities, engaged in voluntary cleanup action or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise you or direct you to restrict or discontinue any such activities; however, you are advised to report the status of those discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions. Your response should be sent to:

Tom Turner  
Associate Regional Counsel  
U.S. EPA - Region V  
Office of Regional Counsel (C-14J)  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

If you need further information regarding this letter, you may contact Tom Turner of the Office of Regional Counsel at (312) 886-6613.

Due to the nature of the problem at this site and the attendant legal ramifications, U.S. EPA strongly encourages you to submit a written response within the time frame specified herein. We hope you will give this matter your immediate attention.

Sincerely,



Linda Nachowicz, Chief  
Emergency Response Branch

Attachment: A-General Notice 75,000 gallon PRP list.  
B-General Notice 10,000 gallon PRP list.